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LITTLETON CO 80120

In re Application of :
Hodges, et al. : ON PETITION
Application No. 10/696,959 :
Filed: October 30, 2003 :
Attorney Docket No. **00020.08CON** :

This is a decision on the "Request for Refund" filed August 24, 2007, which will be treated as a request under 37 CFR 1.28(a).

The request is **GRANTED**.

A review of the application file history reveals that on July 27, 2007, applicant filed a terminal disclaimer and paid the fee of the terminal disclaimer at the large entity rate of \$130.00. Applicant now files a request for a refund of part of the monies paid arguing that applicant was, in fact, a small entity at the time the fee was paid. It is noted that 37 CFR 1.28(a) provides that:

(a) *Refunds based on later establishment of small entity status.* A refund pursuant to § 1.26, based on establishment of small entity status, of a portion of fees timely paid in full prior to establishing status as a small entity may only be obtained if an assertion under § 1.27(c) and a request for a refund of the excess amount are filed within three months of the date of the timely payment of the full fee. The three-month time period is not extendable under § 1.136. Status as a small entity is waived for any fee by the failure to establish the status prior to paying, at the time of paying, or within three months of the date of payment of, the full fee.

It is noted that applicant asserted itself as a small entity when the application was filed. Further, the request for a refund of the amount overpaid was made within three-months of the date the fee was overpaid. The request for refund of the amount overpaid is granted, accordingly.

The amount of \$65.00 will be refunded to deposit account 19-5117, in due course.

Inquiries related to this communication should be directed to the undersigned at (571) 272-3222.

Kenya A. McLaughlin
Petitions Attorney
Office of Petitions